



Reprinted
March 1, 2006

ENGROSSED SENATE BILL No. 349

DIGEST OF SB 349 (Updated February 28, 2006 5:10 pm - DI 69)

Citations Affected: IC 27-1; IC 27-7; noncode.

Synopsis: Insurance. Requires a foreign or alien insurance company that provides certain surety bonds to appoint the commissioner of the department of insurance as the company's agent for service of process in certain actions. Specifies requirements for the conduct of a title insurance agent or title agency, including licensure, continuing education, placement of title insurance business, record keeping, reporting, and management and use of funds. Establishes the title insurance enforcement fund. Requires the department of insurance to establish a title insurance enforcement unit to enforce title insurance law. Allows certain members of the political subdivision catastrophic liability fund (fund) to withdraw from membership and receive a rebate of prior assessments. Provides for a release from liability for the withdrawing member and the fund.

Effective: July 1, 2006.

Waltz

(HOUSE SPONSORS — BURTON, MAHERN)

January 10, 2006, read first time and referred to Committee on Insurance and Financial Institutions.

January 30, 2006, amended, reported favorably — Do Pass.

February 1, 2006, read second time, ordered engrossed.

February 2, 2006, engrossed, recommitted to Committee of One, report adopted. Read third time, passed. Yeas 50, nays 0.

February 3, 2006, re-engrossed.

HOUSE ACTION

February 7, 2006, read first time and referred to Committee on Insurance.

February 16, 2006, amended, reported — Do Pass.

February 28, 2006, read second time, amended, ordered engrossed.

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ES 349—LS 6905/DI 97+



Reprinted
March 1, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 349

A BILL FOR AN ACT to amend the Indiana Code concerning insurance and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-1-15.6-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) As used in this
3 section, "insurer" does not include an officer, director, employee,
4 subsidiary, or affiliate of an insurer.

5 (b) This chapter does not require an insurer to obtain an insurance
6 producer license.

7 (c) The following are not required to be licensed as an insurance
8 producer:

9 (1) An officer, director, or employee of an insurer or of an
10 insurance producer, if the officer, director, or employee does not
11 receive any commission on policies written or sold to insure risks
12 that reside, are located, or are to be performed in Indiana, and if:

13 (A) the officer, director, or employee's activities are executive,
14 administrative, managerial, clerical, or a combination of these,
15 and are only indirectly related to the sale, solicitation, or
16 negotiation of insurance;

17 (B) the officer, director, or employee's function relates to

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- 1 underwriting, loss control, inspection, or the processing,
 2 adjusting, investigating, or settling of a claim on a contract of
 3 insurance; or
 4 (C) the officer, director, or employee is acting in the capacity
 5 of a special agent or agency supervisor assisting insurance
 6 producers and the officer, director, or employee's activities are
 7 limited to providing technical advice and assistance to
 8 licensed insurance producers and do not include the sale,
 9 solicitation, or negotiation of insurance.
- 10 (2) A person who secures and furnishes information for the
 11 purpose of:
 12 (A) group life insurance, group property and casualty
 13 insurance, group annuities, group or blanket accident and
 14 sickness insurance;
 15 (B) enrolling individuals under plans;
 16 (C) issuing certificates under plans or otherwise assisting in
 17 administering plans; or
 18 (D) performing administrative services related to mass
 19 marketed property and casualty insurance;
 20 where no commission is paid to the person for the service.
- 21 (3) A person identified in clauses (A) through (C) who is not in
 22 any manner compensated, directly or indirectly, by a company
 23 issuing a contract, to the extent that the person is engaged in the
 24 administration or operation of a program of employee benefits for
 25 the employer's or association's employees, or for the employees of
 26 a subsidiary or affiliate of the employer or association, that
 27 involves the use of insurance issued by an insurer:
 28 (A) An employer or association.
 29 (B) An officer, director, or employee of an employer or
 30 association.
 31 (C) The trustees of an employee trust plan.
- 32 (4) An:
 33 (A) employee of an insurer; or
 34 (B) organization employed by insurers;
 35 that is engaged in the inspection, rating, or classification of risks,
 36 or in the supervision of the training of insurance producers, and
 37 that is not individually engaged in the sale, solicitation, or
 38 negotiation of insurance.
- 39 (5) A person whose activities in Indiana are limited to advertising,
 40 without the intent to solicit insurance in Indiana, through
 41 communications in printed publications or other forms of
 42 electronic mass media whose distribution is not limited to

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residents of Indiana, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in Indiana.

(6) A person who is not a resident of Indiana and who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that:

(A) the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate the insurance in the state where the insured maintains its principal place of business; and

(B) the contract of insurance insures risks located in that state.

(7) A salaried full-time employee who counsels or advises the employee's employer about the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission.

(8) An officer, employee, or representative of a rental company (as defined in IC 24-4-9-7) who negotiates or solicits insurance incidental to and in connection with the rental of a motor vehicle.

(9) An individual who:

(A) furnishes only title insurance rate information at the request of a consumer; and

(B) does not discuss the terms or conditions of a title insurance policy.

(10) A licensed attorney when acting as a title insurance producer (as defined in IC 27-7-3.5-16) or a title insurance agent (as defined in IC 27-7-3.5-19).

SECTION 2. IC 27-1-17-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. Whenever a foreign or an alien insurance company desires to be admitted to do an insurance business in this state, it shall execute in the English language and present the following to the department, at its office, accompanied by the fees prescribed by law:

~~(a)~~ **(1)** A copy of its articles of incorporation or association, with all amendments thereto, duly authenticated by the proper officer of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States.

~~(b)~~ **(2)** An application for admission, executed in the manner provided in this chapter, setting forth:

~~(1)~~ **(A)** the name of such company;

~~(2)~~ **(B)** the location of its principal office or place of business

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without this state;

~~(3)~~ (C) the names of the states in which it has been admitted or qualified to do business;

~~(4)~~ (D) the character of insurance business under its articles of incorporation or association which it intends to transact in this state, which must conform to the class or classes set forth in the provisions of IC 27-1-5-1;

~~(5)~~ (E) the total authorized capital stock of the company and the amount thereof issued and outstanding, and the surplus required of such company by the laws of the state, country, province, or government under which it is organized, or the state in which it is domiciled in the United States, if a stock company, which shall equal at least the requirements set forth in section 5(a) of this chapter;

~~(6)~~ (F) the total amount of assets and the surplus of assets over all its liabilities, if other than a stock company, which shall equal at least the requirements set forth in section 5(b) of this chapter;

~~(7)~~ (G) if an alien company, the surplus of assets invested according to the laws of the state in the United States where it has its deposit, which shall equal at least the requirements set forth in section 5(c) of this chapter; and

~~(8)~~ (H) such further and additional information as the department may from time to time require.

The application shall be signed in duplicate, in the form prescribed by the department, by the president or a vice president and the secretary or an assistant secretary of the corporation, and verified under oath by the officers signing the same.

~~(c)~~ (3) A statement of its financial condition and business, in the form prescribed by law for annual statements, signed and sworn to by the president or secretary or other principal officers of the company; provided, however, that an alien company shall also furnish a separate statement comprising only its condition and business in the United States, which shall be signed and sworn to by its United States manager.

~~(d)~~ (4) A copy of the last report of examination certified to by the insurance commissioner or other proper supervisory official of the state in which such company is domiciled; provided, however, that the commissioner may cause an examination to be made of the condition and affairs of such company before authority to transact business in this state is given.

~~(e)~~ (5) A certificate from the proper official of the state, country,

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1 province, or government wherein it is incorporated or organized,
 2 or the state in which it is domiciled in the United States, that it is
 3 duly organized or incorporated under those laws and authorized
 4 to make the kind or kinds of insurance which it proposes to make
 5 in this state.

6 ~~(f)~~ (6) A copy of its bylaws or regulations, if any, certified to by
 7 the secretary or similar officer of the insurance company.

8 ~~(g)~~ (7) A duly executed power of attorney in a form prescribed by
 9 the department which constitutes and appoints an individual or a
 10 corporate resident of Indiana, or an authorized Indiana insurer, as
 11 the insurance company's agent, its true and lawful attorney upon
 12 whom, **except as provided in section 4.2 of this chapter**, all
 13 lawful processes in any action in law or in equity against it shall
 14 be served. Such power of attorney shall contain an agreement by
 15 the insurance company that any lawful process against it which
 16 may be served upon the agent as its attorney shall be of the same
 17 force and validity as if served upon the insurance company and
 18 that such power of attorney shall continue in force and be
 19 irrevocable so long as any liability of the insurance company
 20 remains outstanding in this state. Such power of attorney shall be
 21 executed by the president and secretary of the insurance company
 22 or other duly authorized officers under its seal and shall be
 23 accompanied by a certified copy of the resolution of the board of
 24 directors of the company making said appointment and
 25 authorizing the execution of said power of attorney. Service of
 26 any lawful process shall be by delivering to and leaving with the
 27 agent two (2) copies of such process, with copy of the pertinent
 28 complaint attached. The agent shall forthwith transmit to the
 29 defendant company at its last known principal place of business
 30 by registered or certified mail, return receipt requested, one (1) of
 31 the copies of such process, with complaint attached, the other
 32 copy to be retained in a record which shall show all process
 33 served upon and transmitted by him. Such service shall be
 34 sufficient provided the returned receipt or, if the defendant
 35 company shall refuse to accept such mailing, the registered mail
 36 together with an affidavit of plaintiff or his attorney stating that
 37 service was made upon the agent and forwarded as above set forth
 38 but that such mail was returned by the post office department is
 39 filed with the court. The agent shall make information and
 40 receipts available to plaintiff, defendant or their attorneys. No
 41 plaintiff or complainant shall be entitled to a judgment by default
 42 based on service authorized by this section until the expiration of

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at least thirty (30) days from the date on which either the post office receipt or the unclaimed mail together with affidavit is filed with the court. Nothing in this section shall limit or abridge the right to serve any process, notice or demand upon any company in any other manner permitted by law.

~~(h)~~ **(8)** Proof which satisfies the department that it has complied with the financial requirements imposed in this chapter upon foreign and alien insurance companies which transact business in this state and that it is entitled to public confidence and that its admission to transact business in this state will not be prejudicial to public interest.

SECTION 3. IC 27-1-17-4.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 4.2. (a) A foreign or alien insurance company that provides a surety bond that is required or permitted under the law of the United States shall execute a power of attorney in a form prescribed by the department irrevocably appointing the commissioner as the insurance company's agent for service of process in an action on the surety bond if the:**

- (1) surety bond was provided in Indiana; and**
- (2) service of process under this section is in addition to another method of service of process authorized by law or court rule.**

(b) Service of process under this section has the same effect as personal service on the insurance company.

(c) Upon receipt of process described in this section, the commissioner shall forward the process to the resident agent designated by the insurance company under section 4(7) of this chapter.

(d) The commissioner may adopt rules under IC 4-22-2 to establish reasonable fees for the acceptance of process described in this section. Fees collected under rules adopted under this subsection must be deposited in the department of insurance fund established by IC 27-1-3-28.

SECTION 4. IC 27-7-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 3.5. Title Insurance

Sec. 1. As used in this chapter, "abstract of title" means a written history, synopsis, or summary of recorded instruments affecting the title to real property.

Sec. 2. As used in this chapter, "affiliated business" means a

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part of a title insurance agent's business written in Indiana that was referred to the title insurance agent by a producer of title insurance business or an associate of a producer of title insurance business, in circumstances in which the producer or the associate, or both, have a financial interest in the title insurance agent.

Sec. 3. As used in this chapter, "alien title insurer" means a title insurer that is incorporated or organized under the laws of a foreign nation or a foreign province or territory.

Sec. 4. As used in this chapter, "associate" means the following:

(1) A business organized for profit in which a producer of title insurance business is a director, an officer, a partner, an employee, or an owner of a financial interest in the business.

(2) An employee of a producer of title insurance business.

(3) A franchiser or franchisee of a producer of title insurance business.

(4) A spouse, parent, or child of a producer of title insurance business.

(5) A person, other than a natural person, that controls, is controlled by, or is under common control with a producer of title insurance business.

(6) A person with whom a producer of title insurance business or an associate of a producer of title insurance business has an agreement, arrangement, or understanding, or pursues a course of conduct, the purpose or effect of which is to provide financial benefits to the producer or associate for the referral of title insurance business.

Sec. 5. As used in this chapter, "bona fide employee" means an individual:

(1) who devotes substantially all the individual's time to performing services on behalf of a title insurer or title insurance agent; and

(2) whose compensation for the services described in subdivision (1) is in the form of salary or the equivalent paid by the title insurer or title insurance agent.

Sec. 6. As used in this chapter, "chattels real" means an interest in real estate that is less than a freehold or fee interest.

Sec. 7. As used in this chapter, "closing protection letter" means an indemnification of or undertaking to a party to a real estate transaction by a principal, such as a title insurance company, setting forth in writing the extent to which the principal is responsible for intentional or unintentional misconduct or errors of the principal's agent in closing the real estate transaction.

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1 **Sec. 8. As used in this chapter, "commissioner" means the**
 2 **insurance commissioner appointed under IC 27-1-1-2, the**
 3 **commissioner's representative, or the commissioner, director, or**
 4 **superintendent of insurance in another state.**

5 **Sec. 9. As used in this chapter, "department" refers to the**
 6 **department of insurance created by IC 27-1-1-1.**

7 **Sec. 10. As used in this chapter, "escrow" means written**
 8 **instruments, money, or other items deposited by a party with a**
 9 **depository, an escrow agent, or an escrowee for delivery to another**
 10 **party upon the performance of a specified condition or the**
 11 **happening of a certain event.**

12 **Sec. 11. As used in this chapter, "financial interest" means a:**
 13 **(1) direct or indirect; and**
 14 **(2) legal or beneficial;**
 15 **interest in an entity, in which the holder of the interest is or will be**
 16 **entitled to at least five percent (5%) of the net profits or net worth**
 17 **of the entity.**

18 **Sec. 12. As used in this chapter, "foreign title insurer" means a**
 19 **title insurer that is incorporated or organized under the laws of**
 20 **another state, the District of Columbia, or another jurisdiction of**
 21 **the United States.**

22 **Sec. 13. As used in this chapter, "person" means a natural**
 23 **person, a partnership, an association, a cooperative, a corporation,**
 24 **a trust, a limited liability company, or another legal entity.**

25 **Sec. 14. As used in this chapter, "premium" means the charge:**
 26 **(1) specified under a rule adopted by the commissioner;**
 27 **(2) that is made by a title insurer for a title insurance policy,**
 28 **including the charge for:**

29 **(A) performance of primary title services by a title insurer,**
 30 **title insurance agent, or title agency; and**
 31 **(B) incurring the risks incident to the title insurance**
 32 **policy;**

33 **under the several classifications of title insurance policies and**
 34 **forms; and**

35 **(3) upon which a premium tax is paid.**

36 **Sec. 15. As used in this chapter, "primary title services" means**
 37 **the following services:**

38 **(1) Evaluation of a title search or an abstract of title to**
 39 **determine the insurability of title.**
 40 **(2) Clearance of underwriting objections.**
 41 **(3) Issuance and assumption of responsibility for the issuance**
 42 **of a title insurance policy.**

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(4) Issuance of closing protection letters.

Sec. 16. (a) As used in this chapter, "producer" means a person, including an officer, director, or owner of five percent (5%) or more of the equity or capital of a person, that is engaged in Indiana in the trade, business, occupation, or profession of:

- (1) buying or selling interests in real property;**
- (2) making loans secured by interests in real property; or**
- (3) acting as a broker, an agent, or a representative of a person who:**

(A) buys or sells an interest in real property; or

(B) lends or borrows money using an interest in real property as security for the loan.

(b) The term does not include an insurance producer or a limited lines producer (both as defined in IC 27-1-15.6-2).

Sec. 17. As used in this chapter, "referral" means the direction or the exercise of a power or influence over the direction of title insurance business, regardless of whether the consent or approval of another person is sought or obtained with respect to the direction or exercise.

Sec. 18. As used in this chapter, "security deposit" means funds or other property received by a title insurance agent as collateral to secure an indemnitor's obligation under an indemnity agreement under which a title insurer:

- (1) agrees to provide coverage:**
 - (A) under a title insurance policy; and**
 - (B) that would otherwise be excluded under a specific exception to coverage; and**
- (2) is granted a perfected security interest in the collateral in exchange for agreeing to provide the coverage described in subdivision (1).**

Sec. 19. As used in this chapter, "title insurance agent" means an authorized person, other than a bona fide employee of a title insurer or an attorney licensed to practice law in Indiana, who:

- (1) is licensed as a limited lines producer under IC 27-1-15.6; and**
- (2) on behalf of a title insurer performs the following acts in conjunction with the issuance of a title insurance report or title insurance policy:**
 - (A) Determines insurability and issues a title insurance report or a title insurance policy, or both, based on the performance or review of a title search, an examination of title, or an abstract of title.**

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(B) Performs one (1) or more of the following functions:

(i) Collection or disbursement of premiums, escrow, security deposits, or other funds.

(ii) Management of escrow, settlement, or closing.

(iii) Solicitation or negotiation of title insurance business.

The term includes a title agency.

Sec. 20. As used in this chapter, "title insurance business" means any of the following:

(1) Issuing or offering to issue, as a title insurer, a title insurance policy.

(2) Transacting or proposing to transact, as a title insurance agent or title insurer, any of the following activities when conducted or performed in contemplation of or in conjunction with the issuance of a title insurance policy:

(A) Solicitation or negotiation of the issuance of a title insurance policy.

(B) Guaranteeing, warranting, or otherwise insuring the correctness of a title search for instruments affecting the title to:

(i) real property;

(ii) chattels real;

(iii) cooperative units; and

(iv) proprietary leases;

and liens or charges affecting the property described in items (i) through (iv).

(C) Management of escrow, settlement, or closing.

(D) Execution of title insurance policies.

(E) Effectuation of contracts of reinsurance.

(F) Abstraction, searches, or examination of titles.

(G) Issuance of closing protection letters.

(3) Guaranteeing, warranting, or insuring searches or examinations of title to real property or chattels real.

(4) Guaranteeing or warranting the status of title concerning:

(A) ownership of; or

(B) liens on;

real property and chattels real by a person other than a principal to a transaction related to issuance of a title insurance policy.

Sec. 21. As used in this chapter, "title insurance policy" means a contract insuring or indemnifying the owner of, or another person that is lawfully interested in, real or personal property or chattels real, against loss or damage arising from any of the

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1 following conditions existing on or before the title insurance policy
2 date and not excepted or excluded:

- 3 (1) Defects in or liens or encumbrances on the insured title.
- 4 (2) Unmarketability of the insured title.
- 5 (3) Invalidity, lack of priority, or unenforceability of liens or
- 6 encumbrances on the property.
- 7 (4) Lack of legal right of access to real property.
- 8 (5) Unenforceability of rights in title to real property.

9 Sec. 22. As used in this chapter, "title insurance report" means
10 a preliminary report, commitment, or binder:

- 11 (1) issued before the issuance of a title insurance policy; and
- 12 (2) containing the terms, conditions, exceptions, and other
- 13 matters incorporated by reference under which a title insurer
- 14 will issue a title insurance policy.

15 Sec. 23. As used in this chapter, "title insurance subagent"
16 means a person, other than a bona fide employee of a title
17 insurance agent, who on behalf of a title insurance agent
18 determines insurability and issues a title insurance report or title
19 insurance policy, or both, based on the performance or review of
20 a title search or abstract of title. The term does not include a
21 licensed attorney that performs legal services, including title
22 examination or closing services.

23 Sec. 24. As used in this chapter, "title insurer" means the
24 following:

- 25 (1) A company organized under Indiana law to transact title
- 26 insurance business.
- 27 (2) A foreign title insurer or alien title insurer that is licensed
- 28 in Indiana to transact title insurance business.

29 Sec. 25. As used in this chapter, "underwrite" means to accept
30 or reject risk:

- 31 (1) on behalf of a title insurer; and
- 32 (2) under authority granted by the title insurer.

33 Sec. 26. (a) The commissioner shall adopt rules under IC 4-22-2
34 to establish criteria and a process for licensure of the following:

- 35 (1) A title agency.
- 36 (2) A title insurance agent.

37 (b) A license may be issued under this section if each person
38 named on the license possesses all qualifications determined
39 appropriate by the commissioner.

40 (c) A person shall not act as a title agency or title insurance
41 agent, and a title insurer may not contract with a person to act as
42 a title agency or title insurance agent, with respect to risks located

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in Indiana unless the person is licensed under this section as a title agency, title insurance agent, or licensed attorney in Indiana.

(d) An individual:

- (1) employed by or contracted by a title agency, title insurance agent, or title insurer;
- (2) to whom the title agency, title insurance agent, or title insurer delegates authority to act on the title agency's, title insurance agent's, or title insurer's behalf; and
- (3) who engages in title insurance business;

shall be individually licensed under this section. This subsection does not require licensure of an individual who performs only clerical or administrative functions, including quoting title insurance fees.

(e) An applicant for a title agency license or a title insurance agent license under this section must also satisfy the requirements of IC 27-1-15.6 that apply to the title agency or title insurance agent.

(f) A title insurer that engages or employs a title agency shall file with the department, on a form prescribed by the department, an application certifying that the proposed title agency meets both of the following requirements:

- (1) The title agency has obtained a fidelity bond in an amount that is acceptable to the title insurer, but not less than fifty thousand dollars (\$50,000).
- (2) The title agency has obtained an errors and omissions insurance policy:
 - (A) that provides coverage for an opinion of title;
 - (B) from an insurer that is acceptable to the title insurer; and
 - (C) in an amount acceptable to the title insurer, but not less than two hundred fifty thousand dollars (\$250,000) per claim with an aggregate limit.

The department shall adopt rules under IC 4-22-2 to specify an alternative method of compliance with subdivisions (1) and (2) if a fidelity bond or errors and omissions insurance is generally unavailable.

(g) A title agency shall provide to a title insurer with which the title agency places title insurance business, in a timely manner, information requested by the title insurer to comply with reporting requirements of the department.

(h) To obtain an initial license under this section, a title agency shall comply with the requirements of section 27(a) of this chapter.

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1 **Sec. 27. (a) To obtain an initial license under this section, a title**
 2 **agency shall:**

3 **(1) have deposited with the department securities of the type**
 4 **described in IC 27-1-13-3(b) and having at all times a market**
 5 **value of not less than ten thousand dollars (\$10,000); or**

6 **(2) post a surety bond of not less than ten thousand dollars**
 7 **(\$10,000) payable to the department;**

8 **to secure the title agency's performance of the title agency's duties**
 9 **and responsibilities under the contract described in section 30 of**
 10 **this chapter and entered into between the title agency and each title**
 11 **insurer for which the title agency is appointed. If a surety bond is**
 12 **generally unavailable, the department may adopt rules under**
 13 **IC 4-22-2 to establish alternative methods by which a title agency**
 14 **may comply with this subsection.**

15 **(b) The deposit made or bond posted under subsection (a) is for**
 16 **the benefit of a person insured under a title insurance policy and**
 17 **damaged by the title agency's violation of this chapter or of a**
 18 **contractual duty or responsibility described in subsection (a).**

19 **(c) A title insurer shall not, directly or indirectly on behalf of a**
 20 **title agency, provide a deposit or bond required under subsection**
 21 **(a).**

22 **(d) A title agency may:**

23 **(1) exchange or substitute securities:**

24 **(A) described in IC 27-1-13-3(b); and**

25 **(B) of like quality and value;**

26 **for securities on deposit;**

27 **(2) receive interest and other income accruing on securities**
 28 **deposited; and**

29 **(3) at reasonable times, inspect a deposit of securities made;**
 30 **under subsection (a)(1).**

31 **(e) If a properly documented claim is timely filed with the**
 32 **department by a person described in subsection (b), the**
 33 **department may remit to the person in payment of the claim an**
 34 **appropriate amount of:**

35 **(1) a deposit made under subsection (a); or**

36 **(2) proceeds that are received from the surety.**

37 **(f) A deposit or bond described in subsection (a) must remain**
 38 **unimpaired while the title agency continues in business in Indiana**
 39 **and for one (1) year after termination of all title agency**
 40 **appointments held by the title agency. If there are no claims**
 41 **outstanding against the deposit or bond one (1) year after**
 42 **termination of the appointments, the department shall return the**

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deposit or bond and any accrued interest to the title agency.

Sec. 28. (a) A title agency or title insurance agent that is licensed under section 26 of this chapter shall comply with the requirements of IC 27-1-15.7 that apply to the title agency or title insurance agent.

(b) A continuing education course must be approved under IC 27-1-15.7-4.

(c) An individual who teaches an approved course of instruction or lectures at an approved seminar qualifies for the same number of continuing education hours as would be granted to an individual who takes and successfully completes the course or seminar.

(d) The department may grant an individual waiver of the continuing education requirements of IC 27-1-15.7 upon a showing by a licensee that it is not feasible for the licensee to satisfy the requirements before the licensee's license renewal date for an acceptable reason, including the licensee's:

(1) serious physical injury or illness; or

(2) active duty in the armed services for an extended period.

(e) An individual who is subject to this section shall furnish, in a manner satisfactory to the department, certification of the individual's completion of courses, programs, or seminars required by this section.

Sec. 29. (a) In addition to the requirements of section 26(f) of this chapter, the commissioner may require a title insurance agent to maintain, for the benefit of a title insurer, an insured, or a depositor, under terms and conditions to be prescribed by the commissioner, in amounts commensurate with the title insurance agent's average exposure and the volume and nature of the title insurance agent's business, a sufficient net worth to ensure the title insurance agent's solvency and commitment to the purpose of being a title insurance agent.

(b) In determining the precise amount and terms and conditions described in subsection (a), the commissioner may adopt rules under IC 4-22-2 that:

(1) specify acceptable alternatives to the net worth requirements described in subsection (a); and

(2) exempt certain persons from complying with all or part of the net worth requirements described in subsection (a) or specified alternatives to the net worth requirements by virtue of:

(A) the person's actual or expected volume of business; or

(B) individual circumstances that show that the

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requirements would pose an undue hardship on the title insurance agent and the title insurance agent's services will be needed by and desirable to insureds.

(c) The commissioner may adopt rules under IC 4-22-2 to specify information that must be provided to evidence sufficiency of a title insurance agent's net worth as described in subsection (a).

(d) Financial information provided to evidence sufficiency of a title insurance agent's net worth under this section is confidential.

(e) A title insurance agent shall perform, through the title insurance agent's bona fide employees, primary title services to receive compensation for the services the title insurance agent renders.

Sec. 30. (a) A person, firm, association, or corporation that acts as a title insurance agent shall not place title insurance business with a title insurer unless a written contract is in force between the title insurance agent and the title insurer that:

- (1) specifies the responsibilities of each party;
- (2) if both parties share responsibility for a particular function, specifies the division of the responsibilities; and
- (3) contains the following minimum provisions:

(A) The title insurer may terminate the contract upon written notice if one (1) of the following occurs:

- (i) Fraud, insolvency, appointment of a receiver or conservator, bankruptcy, cancellation of the title insurance agent's license to do title insurance business, or the commencement of legal proceedings by the state of domicile of the title insurance agent that, if successful, will lead to cancellation of the title insurance agent's license to do title insurance business.

(ii) Material breach of a provision of the contract.

(iii) Notice of cancellation is provided in accordance with contract termination requirements.

(B) Upon notice of termination, the title insurance agent shall immediately discontinue all underwriting.

This subdivision does not relieve a title insurance agent or title insurer of a contractual obligation not specified in this subdivision.

(b) A title insurance agent shall render accounts detailing all transactions, and remit all funds, due to a title insurer under the contract described in subsection (a) to the title insurer before the later of the following:

- (1) Forty-five (45) days after the end of the month of the

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effective date of the title insurance policy.

(2) Within the time specified by the underwriting contract.

(c) Funds collected by a title insurance agent for the account of a title insurer:

(1) must be held in a fiduciary capacity in a bank that is a qualified financial institution; and

(2) are the property of the title insurer for whom the funds are collected.

(d) A title insurance agent shall keep records concerning funds described in subsection (c) in a manner that permits identification of funds that belong to a particular title insurer.

(e) At a title insurer's request, a title insurance agent or a title insurance agent's successor in interest, transferee, or receiver shall provide access to and the right to copy all escrow files and underwriting files involving a transaction in which a title insurance report or title insurance policy is issued or will be issued by the title insurance agent.

(f) A title insurance agent shall provide to a title insurer access to and a right to copy accounts and records maintained by the title insurance agent with respect to title insurance business placed with the title insurer.

(g) A contract described in subsection (a) may not be assigned in whole or in part by a title insurance agent without the expressed written consent of the title insurer.

(h) It is the duty of a title insurance agent to immediately report and forward to a title insurer all title related escrow claims and title claims reported to the title insurance agent by a policyholder or another person. However, if the contract described in subsection (a) permits the title insurance agent to settle claims on behalf of the title insurer:

(1) the title insurance agent shall send a copy of the claim file to the title insurer at the title insurer's request or as soon as it is known by the title insurance agent that the claim:

(A) has the potential to exceed an amount established by the title insurer;

(B) involves a coverage dispute;

(C) may exceed the title insurance agent's claims settlement authority;

(D) is open for more than six (6) months; or

(E) is closed by payment exceeding an amount established by the title insurer;

(2) files related to title and title related escrow claims settled

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by the title insurance agent are the property of the title insurer; and

(3) the title insurer may:

(A) suspend a settlement authority granted to the title insurance agent during a pending dispute regarding a cause for termination of the contract described in subsection (a); or

(B) upon:

(i) the title insurer's written notice to the title insurance agent; or

(ii) the termination of the contract described in subsection (a);

immediately terminate a settlement authority granted to the title insurance agent.

This subdivision does not relieve a title insurance agent or title insurer of any other contractual obligation.

(i) If electronic claims files exist in the records of a title insurance agent, the contract described in subsection (a) must address the immediate transmission of the data contained in the electronic claims files.

(j) A title insurance agent shall not:

(1) bind reinsurance or retrocession on behalf of a title insurer; or

(2) appoint a title insurance subagent, without the expressed written consent of the title insurance underwriter that provides underwriting services under a contract with a title insurer.

(k) The contract described in subsection (a) must include specific terms of a title insurance agent's compensation.

(l) A title insurance agent shall maintain an inventory of title insurance policy forms or title insurance policy numbers assigned to the title insurance agent by a title insurer.

(m) A title insurance agent shall:

(1) annually;

(2) within a time specified by the contract described in subsection (a); or

(3) concurrent with the renewal date of the title insurance agent's contract with a title insurer;

furnish a title insurer with proof that the title insurance agent is in compliance with section 26 of this chapter.

(n) A:

(1) title insurer; or

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(2) title insurance agent on behalf of a title insurer;
 shall issue a title insurance policy not later than sixty (60) days
 after all conditions or requirements specified in the title insurance
 report have been satisfied. However, if a title insurance policy
 cannot be issued within the period set forth in this subsection due
 to an act of God or war, the policy must be issued within a
 reasonable period determined by the department.

Sec. 31. (a) If:

(1) a title insurance agent or title insurer provides settlement
 services and issues a lender's title insurance policy in
 conjunction with a mortgage loan made simultaneously with
 the purchase of all or part of residential real estate securing
 the loan; and

(2) an owner's title insurance policy has not been requested;
 the title insurance agent or title insurer shall, at the time the title
 insurance report is prepared, provide written notice described in
 subsection (b) to the purchaser-mortgagor or the
 purchaser-mortgagor's representative.

(b) Notice provided under subsection (a) must explain:

(1) that a lender's title insurance policy will be issued to
 protect the mortgage lender;

(2) that the lender's title insurance policy does not provide
 title insurance protection to the purchaser-mortgagor as the
 owner of the property being purchased;

(3) what an owner's title insurance policy insures against;

(4) what possible risks exist for the purchaser-mortgagor that
 could be insured against through the purchase of an owner's
 title insurance policy; and

(5) that the purchaser-mortgagor may obtain an owner's title
 insurance policy protecting the property owner for an
 additional cost.

(c) A title insurer or title insurance agent shall, at the time the
 title insurance report is prepared, provide written notice to all
 parties that receive the title insurance report that a closing
 protection letter may be purchased.

(d) The department shall adopt rules under IC 4-22-2 to specify
 the content of each notice required under this section.

Sec. 32. (a) A title insurance agent shall maintain sufficient
 records of the title insurance agent's affairs, including the title
 insurance agent's escrow operations and escrow trust accounts, to
 allow the commissioner to adequately ensure that the title
 insurance agent is in compliance with this chapter.

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(b) The commissioner may prescribe:

(1) specific record entries and documents that must be maintained under subsection (a); and

(2) the length of time for which the records and documents must be maintained.

Sec. 33. (a) A title insurance agent, an officer, a director, or an employee of a title insurance agent, or a person associated with a title insurance agent or an officer, a director, or an employee of a title insurance agent, who:

(1) is an independent contractor for bookkeeping or similar purposes; and

(2) knowingly or intentionally converts or misappropriates funds received or held in escrow or in trust by the title insurance agent;

or a person who knowingly or intentionally receives or conspires to receive funds described in subdivision (2) commits an offense described in IC 35-43-9-7.

(b) If a title insurance agent or title agency defalcates, converts, or misappropriates funds held by the title insurance agent or title agency and the title insurance agent or title agency is convicted of an offense under IC 35-43-9-7, the following apply:

(1) The title insurer is liable for the defalcation, conversion, or misappropriation by the title insurance agent or title agency.

(2) If the title insurance agent or title agency is a title insurance agent or title agency for two (2) or more title insurers, the liability must be borne by the title insurer upon which a title insurance report or title insurance policy was issued before the illegal act.

However, a title insurer's liability under this subsection is limited to the amount payable under a title insurance policy issued or committed, or a closing protection letter issued, in connection with the real estate closing or escrow in relation to which the defalcation, conversion, or misappropriation is committed, plus reasonable attorney's fees.

(c) A title insurer shall, at least annually, conduct an on-site review of the underwriting, claims, and escrow practices of a title insurance agent, including a review of the title insurance agent's title insurance policy blank inventory and processing operations. If the title insurance agent does not maintain separate bank or trust accounts for each title insurer that the title insurance agent represents, the title insurer shall verify that the funds held on the title insurer's behalf are reasonably ascertainable from the books

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of account and records of the title insurance agent.

Sec. 34. (a) The title insurance enforcement fund is established for the following purposes:

(1) To provide supplemental funding for department operations that are related to title insurance.

(2) To pay the costs of hiring and employing staff in the areas of enforcement of title insurance law.

(b) The title insurance enforcement fund shall be administered by the commissioner. The expenses of administering the title insurance enforcement fund shall be paid from money in the fund.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(e) The following shall be deposited in the title insurance enforcement fund:

(1) All fines, monetary penalties, and costs imposed upon persons by the department as authorized by law for violation of this chapter.

(2) Other amounts remitted to the commissioner or the department that are required by law to be deposited into the title insurance enforcement fund.

Sec. 35. (a) The commissioner shall establish a title insurance enforcement unit to enforce this chapter.

(b) The title insurance enforcement unit shall do the following:

(1) Investigate deceptive acts in connection with title insurance.

(2) Investigate violations of this chapter.

(3) Cooperate with federal, state, and local law enforcement agencies in the investigation of:

(A) deceptive acts in connection with title insurance; and

(B) violations of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).

(c) The following may cooperate with the title insurance enforcement unit, including sharing information that is otherwise confidential, to enforce compliance with this chapter:

(1) The professional licensing agency and appropriate licensing boards with respect to a person licensed under IC 25.

(2) The department of financial institutions.

(3) The securities division of the office of the secretary of

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state.

(4) The supreme court disciplinary commission, with respect to attorney misconduct.

(5) The housing and community development authority.

(6) The department of state revenue.

(7) The state police department.

(8) A prosecuting attorney.

(9) Local law enforcement agencies.

(10) The Indiana real estate commission.

(d) The commissioner may file a complaint with an entity specified in subsection (c) to enforce this chapter.

(e) This section does not limit the jurisdiction of an entity described in subsection (c).

Sec. 36. The commissioner may adopt rules under IC 4-22-2 to implement this chapter.

Sec. 37. (a) If the commissioner, after notice and hearing under IC 4-21.5, determines that a person has violated this chapter, the commissioner may:

(1) impose a civil penalty of not more than ten thousand dollars (\$10,000) for each violation; and

(2) if the person is a title insurance agent, order revocation or suspension of the title insurance agent's license.

(b) If an order of rehabilitation or liquidation of a title insurer has been entered under IC 27-9, and:

(1) the receiver appointed under the order determines that a title insurance agent or another person has violated this chapter; and

(2) the title insurer has suffered a resulting loss or damage; the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the title insurer and the title insurer's policyholders and creditors.

(c) This section does not:

(1) affect the right of the commissioner to impose another penalty under this title; or

(2) limit or restrict the rights of policyholders, claimants, or creditors.

Sec. 38. The commissioner or attorney general may bring an action in a court with jurisdiction to enjoin violations of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).

SECTION 5. [EFFECTIVE JULY 1, 2006] (a) The definitions in IC 27-1-29.1 apply throughout this SECTION.

(b) This SECTION applies to a member that:

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(1) has been a member of the fund for at least ten (10) years;
and

(2) provided a withdrawal notice in 2005 for the 2006
calendar year insured period.

(c) A member described in subsection (b) may:

(1) withdraw from the fund with proper notice; and

(2) elect to receive a rebate of the member's prior assessments
from the reserve account established under IC 27-1-29.1-8 to
establish a self-insured retainage account.

(d) The commission shall pay a rebate described in subsection
(c) to a member making an election under subsection (c) at any
time the reserve account exceeds the five million dollar
(\$5,000,000) balance required under IC 27-1-29.1-8(a).

(e) Notwithstanding IC 27-1-29.1-21, after a member described
in this SECTION withdraws from the fund and receives a rebate
under this SECTION:

(1) the member is released from all liability to the fund related
to claims based on acts or omissions that took place while the
member was a member of the fund; and

(2) the fund is released from all liability related to claims
based on acts or omissions of the member that took place
while the member was a member of the fund.

(f) This SECTION expires December 31, 2008.

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COMMITTEE REPORT

Madam President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 349, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 27-1-15.6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) As used in this section, "insurer" does not include an officer, director, employee, subsidiary, or affiliate of an insurer.

(b) This chapter does not require an insurer to obtain an insurance producer license.

(c) The following are not required to be licensed as an insurance producer:

(1) An officer, director, or employee of an insurer or of an insurance producer, if the officer, director, or employee does not receive any commission on policies written or sold to insure risks that reside, are located, or are to be performed in Indiana, and if:

(A) the officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance;

(B) the officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or

(C) the officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers and the officer, director, or employee's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance.

(2) A person who secures and furnishes information for the purpose of:

(A) group life insurance, group property and casualty insurance, group annuities, group or blanket accident and sickness insurance;

(B) enrolling individuals under plans;

(C) issuing certificates under plans or otherwise assisting in administering plans; or

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(D) performing administrative services related to mass marketed property and casualty insurance;

where no commission is paid to the person for the service.

(3) A person identified in clauses (A) through (C) who is not in any manner compensated, directly or indirectly, by a company issuing a contract, to the extent that the person is engaged in the administration or operation of a program of employee benefits for the employer's or association's employees, or for the employees of a subsidiary or affiliate of the employer or association, that involves the use of insurance issued by an insurer:

(A) An employer or association.

(B) An officer, director, or employee of an employer or association.

(C) The trustees of an employee trust plan.

(4) An:

(A) employee of an insurer; or

(B) organization employed by insurers;

that is engaged in the inspection, rating, or classification of risks, or in the supervision of the training of insurance producers, and that is not individually engaged in the sale, solicitation, or negotiation of insurance.

(5) A person whose activities in Indiana are limited to advertising, without the intent to solicit insurance in Indiana, through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of Indiana, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in Indiana.

(6) A person who is not a resident of Indiana and who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that:

(A) the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate the insurance in the state where the insured maintains its principal place of business; and

(B) the contract of insurance insures risks located in that state.

(7) A salaried full-time employee who counsels or advises the employee's employer about the insurance interests of the employer or of the subsidiaries or business affiliates of the employer, provided that the employee does not sell or solicit insurance or receive a commission.

(8) An officer, employee, or representative of a rental company

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(as defined in IC 24-4-9-7) who negotiates or solicits insurance incidental to and in connection with the rental of a motor vehicle.

(9) An individual who:

(A) furnishes only title insurance rate information at the request of a consumer; and

(B) does not discuss the terms or conditions of a title insurance policy.

(10) A licensed attorney when acting as a title insurance producer (as defined in IC 27-7-3.5-15) or a title insurance agent (as defined in IC 27-7-3.5-18)."

Page 3, line 34, after "agent," insert "**or**".

Page 3, line 34, delete ", or an".

Page 3, line 35, delete "attorney".

Page 3, delete lines 41 through 42.

Page 4, delete lines 1 through 12.

Page 4, line 13, delete "17." and insert "**16.**".

Page 4, line 18, delete "18." and insert "**17.**".

Page 4, line 29, delete "19." and insert "**18.**".

Page 4, line 31, delete "insurer," and insert "**insurer or an attorney licensed to practice law in Indiana,**".

Page 5, line 4, delete "20." and insert "**19.**".

Page 5, line 36, delete "21." and insert "**20.**".

Page 6, line 6, delete "22." and insert "**21.**".

Page 6, line 12, delete "23." and insert "**22.**".

Page 6, line 20, delete "24." and insert "**23.**".

Page 6, line 26, delete "25." and insert "**24.**".

Page 6, line 30, delete "26." and insert "**25.**".

Page 6, line 41, delete "agency or" and insert "**agency,**".

Page 6, line 41, delete "agent" and insert "**agent, or licensed attorney**".

Page 7, line 35, delete "27." and insert "**26.**".

Page 7, line 36, delete "26" and insert "**25**".

Page 8, line 34, delete "28." and insert "**27.**".

Page 8, line 34, delete "(a) If title insurance business to be written by a title".

Page 8, delete lines 35 through 42.

Page 9, delete lines 1 through 25.

Page 9, line 26, delete "(d)" and insert "**(a)**".

Page 9, line 26, delete "26(f)" and insert "**25(f)**".

Page 8, run in line 34 and page 9, line 26.

Page 9, line 35, delete "(e)" and insert "**(b)**".

Page 9, line 36, delete "(d)," and insert "**(a),**".

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Page 9, line 39, delete "(d);" and insert "**(a);**".
 Page 9, line 41, delete "(d)" and insert "**(a)**".
 Page 10, line 7, delete "(f)" and insert "**(c)**".
 Page 10, delete lines 11 through 21.
 Page 10, line 22, delete "30." and insert "**28.**".
 Page 12, line 23, after "agent" insert ".".
 Page 12, line 32, after "insurer;" insert "**or**".
 Page 12, line 36, delete "insurer; or" and insert "**insurer.**".
 Page 12, delete lines 37 through 42.
 Page 13, delete line 1.
 Page 13, line 14, delete "26" and insert "**25**".
 Page 13, line 15, delete "31." and insert "**29.**".
 Page 13, line 39, delete "32." and insert "**30.**".
 Page 14, line 7, delete "33." and insert "**31.**".
 Page 14, line 7, delete "A title insurance agent may operate as an escrow,".
 Page 14, delete lines 8 through 42.
 Page 15, delete lines 1 through 12.
 Page 15, line 13, delete "(3)" and insert "**(a)**".
 Page 14, run in line 7 and page 15, line 13.
 Page 15, line 17, delete "(A)", begin a new line block indented and insert:
 "**(1)**".
 Page 15, line 19, delete "(B)", begin a new line block indented and insert:
 "**(2)**".
 Page 15, line 22, beginning with "or" begin a new line blocked left.
 Page 15, line 23, delete "clause (B)" and insert "**subdivision (2)**".
 Page 15, line 25, delete "(4)", begin a new paragraph and insert "**(b)**".
 Page 15, line 26, delete "in trust".
 Page 15, line 28, delete "(A)", begin a new line block indented and insert:
 "**(1)**".
 Page 15, line 32, delete "(B)", begin a new line block indented and insert:
 "**(2)**".
 Page 15, line 37, delete "(C)", begin a new line block indented and insert:
 "**(3)**".
 Page 16, line 4, delete "(5)", begin a new paragraph and insert:
 "**(c)**".

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Page 16, line 14, delete "34." and insert "**32.**".

Page 16, line 32, delete "35" and insert "**33**".

Page 16, line 42, delete "35." and insert "**33.**".

Page 17, line 3, delete "The fee must be specified as a line item on the closing" and insert "**If the person purchases both a lender's title insurance policy and an owner's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of residential real estate securing the loan, the person shall pay one (1) fee of five dollars (\$5) at the time of the payment.**".

Page 17, delete lines 4 through 5.

Page 17, line 11, delete "34" and insert "**32**".

Page 17, line 12, delete "36." and insert "**34.**".

Page 17, line 34, delete "finance authority." and insert "**and community development authority.**".

Page 17, delete line 39.

Page 17, line 40, delete "(11)" and insert "**(10)**".

Page 18, delete lines 3 through 42.

Page 19, delete lines 1 through 5.

Page 19, line 6, delete "39." and insert "**35.**".

Page 19, line 8, delete "40." and insert "**36.**".

Page 19, line 29, delete "41." and insert "**37.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 349 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Madam President: I move that Engrossed Senate Bill 349 be recommitted to a Committee of One, consisting of Senator Waltz, with specific instruction to amend said bill as follows:

Page 15, line 37, delete "Interest that".

Page 15, delete line 38.

Page 16, delete lines 9 through 25.

Page 16, line 26, delete "Sec. 34." and insert "**Sec. 33.**".

Page 17, line 16, delete "Sec. 35." and insert "**Sec. 34.**".

Page 17, line 18, delete "Sec. 36." and insert "**Sec. 35.**".

Page 17, line 39, delete "Sec. 37." and insert "**Sec. 36.**".

(Reference is to ESB 349 as printed January 30, 2006.)

WALTZ

 COMMITTEE REPORT

Madam President: Your Committee on Rules and Legislative Procedure, to which was referred the Motion to recommit Engrossed Senate Bill 349, to a Committee of One, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said Motion be adopted.

GARTON, Chairperson

 COMMITTEE REPORT

Madam President: Your Committee of One, to which was referred Engrossed Senate Bill 349, begs leave to report that said Bill has been amended as directed.

WALTZ, Chairperson

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred Senate Bill 349, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 10, line 31, delete "term" and insert "**terms**".

Page 15, delete line 42.

Page 16, delete line 1.

Page 16, line 2, delete "(2)" and insert "**(1)**".

Page 16, line 5, delete "(3)" and insert "**(2)**".

and when so amended that said bill do pass.

(Reference is to SB 349 as reprinted February 3, 2006.)

RIPLEY, Chair

Committee Vote: yeas 9, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 349 be amended to read as follows:

Page 3, line 26, delete "IC 27-7-3.5-15)" and insert "**IC 27-7-3.5-16)**".

Page 3, line 27, delete "IC 27-7-3.5-18)." and insert "**IC 27-7-3.5-19)**".

Page 4, line 30, after "7." insert "**As used in this chapter, "closing protection letter" means an indemnification of or undertaking to a party to a real estate transaction by a principal, such as a title insurance company, setting forth in writing the extent to which the principal is responsible for intentional or unintentional misconduct or errors of the principal's agent in closing the real estate transaction.**

Sec. 8."

Page 4, line 34, delete "8." and insert "**9.**".

Page 4, line 36, delete "9." and insert "**10.**".

Page 4, line 41, delete "10." and insert "**11.**".

Page 5, line 5, delete "11." and insert "**12.**".

Page 5, line 9, delete "12." and insert "**13.**".

Page 5, line 12, delete "13." and insert "**14.**".

Page 5, line 23, delete "14." and insert "**15.**".

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Page 5, between lines 29 and 30, begin a new line block indented and insert:

"(4) Issuance of closing protection letters."

Page 5, line 30, delete "15." and insert "16."

Page 6, line 1, delete "16." and insert "17."

Page 6, line 6, delete "17." and insert "18."

Page 6, line 17, delete "18." and insert "19."

Page 6, between lines 33 and 34, begin a new line blocked left and insert:

"The term includes a title agency."

Page 6, line 34, delete "19." and insert "20."

Page 7, line 24, delete "20." and insert "21."

Page 7, line 36, delete "21." and insert "22."

Page 7, line 42, delete "22." and insert "23."

Page 8, line 8, delete "23." and insert "24."

Page 8, line 14, delete "24." and insert "25."

Page 8, line 18, delete "25." and insert "26."

Page 9, line 10, after "obtained" insert "an".

Page 9, line 11, after "insurance" insert "policy:

(A) that provides coverage for an opinion of title;

**(B) from an insurer that is acceptable to the title insurer;
and**

(C)".

Page 9, line 13, delete "with a deductible not greater" and insert ".".

Page 9, delete line 14.

Page 9, between lines 22 and 23, begin a new paragraph and insert:

"(h) To obtain an initial license under this section, a title agency shall comply with the requirements of section 27(a) of this chapter.

Sec. 27. (a) To obtain an initial license under this section, a title agency shall:

(1) have deposited with the department securities of the type described in IC 27-1-13-3(b) and having at all times a market value of not less than ten thousand dollars (\$10,000); or

(2) post a surety bond of not less than ten thousand dollars (\$10,000) payable to the department;

to secure the title agency's performance of the title agency's duties and responsibilities under the contract described in section 30 of this chapter and entered into between the title agency and each title insurer for which the title agency is appointed. If a surety bond is generally unavailable, the department may adopt rules under IC 4-22-2 to establish alternative methods by which a title agency may comply with this subsection.

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(b) The deposit made or bond posted under subsection (a) is for the benefit of a person insured under a title insurance policy and damaged by the title agency's violation of this chapter or of a contractual duty or responsibility described in subsection (a).

(c) A title insurer shall not, directly or indirectly on behalf of a title agency, provide a deposit or bond required under subsection (a).

(d) A title agency may:

(1) exchange or substitute securities:

(A) described in IC 27-1-13-3(b); and

(B) of like quality and value;

for securities on deposit;

(2) receive interest and other income accruing on securities deposited; and

(3) at reasonable times, inspect a deposit of securities made; under subsection (a)(1).

(e) If a properly documented claim is timely filed with the department by a person described in subsection (b), the department may remit to the person in payment of the claim an appropriate amount of:

(1) a deposit made under subsection (a); or

(2) proceeds that are received from the surety.

(f) A deposit or bond described in subsection (a) must remain unimpaired while the title agency continues in business in Indiana and for one (1) year after termination of all title agency appointments held by the title agency. If there are no claims outstanding against the deposit or bond one (1) year after termination of the appointments, the department shall return the deposit or bond and any accrued interest to the title agency."

Page 9, line 23, delete "26." and insert "28."

Page 9, line 24, delete "25" and insert "26".

Page 9, line 27, delete "Subject to approval" and insert "A continuing education course must be approved".

Page 9, line 27, delete ", a continuing" and insert ".".

Page 9, delete lines 28 through 42.

Page 10, line 5, delete "do the following:".

Page 10, delete lines 6 through 8.

Page 10, line 9, delete "(2) Grant" and insert "grant".

Page 10, run in lines 5 through 9.

Page 10, line 14, delete "(A)", begin a new line block indented and insert:

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Page 10, line 14, after ";" insert "**or**".

Page 10, line 15, delete "(B)", begin a new line block indented and insert:

"(2)".

Page 10, line 16, delete "; or" and insert ".".

Page 10, delete line 17.

Page 10, line 22, delete "27." and insert "**29.**".

Page 10, line 22, delete "25(f)" and insert "**26(f)**".

Page 11, line 3, after "(c)" insert "**The commissioner may adopt rules under IC 4-22-2 to specify information that must be provided to evidence sufficiency of a title insurance agent's net worth as described in subsection (a).**

(d) Financial information provided to evidence sufficiency of a title insurance agent's net worth under this section is confidential.
(e)".

Page 11, line 7, delete "28." and insert "**30.**".

Page 13, line 34, delete "25" and insert "**26**".

Page 13, between lines 34 and 35, begin a new paragraph and insert:
"(n) A:

(1) title insurer; or

(2) title insurance agent on behalf of a title insurer;

shall issue a title insurance policy not later than sixty (60) days after all conditions or requirements specified in the title insurance report have been satisfied. However, if a title insurance policy cannot be issued within the period set forth in this subsection due to an act of God or war, the policy must be issued within a reasonable period determined by the department."

Page 13, line 35, delete "29." and insert "**31.**".

Page 14, between lines 16 and 17, begin a new paragraph and insert:

"(c) A title insurer or title insurance agent shall, at the time the title insurance report is prepared, provide written notice to all parties that receive the title insurance report that a closing protection letter may be purchased.

(d) The department shall adopt rules under IC 4-22-2 to specify the content of each notice required under this section."

Page 14, line 17, delete "30." and insert "**32.**".

Page 14, line 27, delete "31." and insert "**33.**".

Page 14, line 41, delete "," and insert "**and the title insurance agent or title agency is convicted of an offense under IC 35-43-9-7,**".

Page 15, line 1, after "agency" insert ".".

Page 15, delete line 2.

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Page 15, delete lines 8 through 16, begin a new line blocked left and insert:

"However, a title insurer's liability under this subsection is limited to the amount payable under a title insurance policy issued or committed, or a closing protection letter issued, in connection with the real estate closing or escrow in relation to which the defalcation, conversion, or misappropriation is committed, plus reasonable attorney's fees."

Page 15, line 26, delete "32." and insert "34."

Page 16, line 6, delete "33." and insert "35."

Page 16, line 38, delete "34." and insert "36."

Page 16, line 40, delete "35." and insert "37."

Page 17, line 19, delete "36." and insert "38."

(Reference is to ESB 349 as printed February 17, 2006.)

BURTON

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 349 be amended to read as follows:

Page 3, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 2. IC 27-1-17-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. Whenever a foreign or an alien insurance company desires to be admitted to do an insurance business in this state, it shall execute in the English language and present the following to the department, at its office, accompanied by the fees prescribed by law:

(~~a~~) (1) A copy of its articles of incorporation or association, with all amendments thereto, duly authenticated by the proper officer of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States.

(~~b~~) (2) An application for admission, executed in the manner provided in this chapter, setting forth:

(~~1~~) (A) the name of such company;

(~~2~~) (B) the location of its principal office or place of business without this state;

(~~3~~) (C) the names of the states in which it has been admitted or qualified to do business;

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~~(4)~~ **(D)** the character of insurance business under its articles of incorporation or association which it intends to transact in this state, which must conform to the class or classes set forth in the provisions of IC 27-1-5-1;

~~(5)~~ **(E)** the total authorized capital stock of the company and the amount thereof issued and outstanding, and the surplus required of such company by the laws of the state, country, province, or government under which it is organized, or the state in which it is domiciled in the United States, if a stock company, which shall equal at least the requirements set forth in section 5(a) of this chapter;

~~(6)~~ **(F)** the total amount of assets and the surplus of assets over all its liabilities, if other than a stock company, which shall equal at least the requirements set forth in section 5(b) of this chapter;

~~(7)~~ **(G)** if an alien company, the surplus of assets invested according to the laws of the state in the United States where it has its deposit, which shall equal at least the requirements set forth in section 5(c) of this chapter; and

~~(8)~~ **(H)** such further and additional information as the department may from time to time require.

The application shall be signed in duplicate, in the form prescribed by the department, by the president or a vice president and the secretary or an assistant secretary of the corporation, and verified under oath by the officers signing the same.

~~(c)~~ **(3)** A statement of its financial condition and business, in the form prescribed by law for annual statements, signed and sworn to by the president or secretary or other principal officers of the company; provided, however, that an alien company shall also furnish a separate statement comprising only its condition and business in the United States, which shall be signed and sworn to by its United States manager.

~~(d)~~ **(4)** A copy of the last report of examination certified to by the insurance commissioner or other proper supervisory official of the state in which such company is domiciled; provided, however, that the commissioner may cause an examination to be made of the condition and affairs of such company before authority to transact business in this state is given.

~~(e)~~ **(5)** A certificate from the proper official of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States, that it is duly organized or incorporated under those laws and authorized

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to make the kind or kinds of insurance which it proposes to make in this state.

~~(f)~~ (6) A copy of its bylaws or regulations, if any, certified to by the secretary or similar officer of the insurance company.

~~(g)~~ (7) A duly executed power of attorney in a form prescribed by the department which constitutes and appoints an individual or a corporate resident of Indiana, or an authorized Indiana insurer, as the insurance company's agent, its true and lawful attorney upon whom, **except as provided in section 4.2 of this chapter**, all lawful processes in any action in law or in equity against it shall be served. Such power of attorney shall contain an agreement by the insurance company that any lawful process against it which may be served upon the agent as its attorney shall be of the same force and validity as if served upon the insurance company and that such power of attorney shall continue in force and be irrevocable so long as any liability of the insurance company remains outstanding in this state. Such power of attorney shall be executed by the president and secretary of the insurance company or other duly authorized officers under its seal and shall be accompanied by a certified copy of the resolution of the board of directors of the company making said appointment and authorizing the execution of said power of attorney. Service of any lawful process shall be by delivering to and leaving with the agent two (2) copies of such process, with copy of the pertinent complaint attached. The agent shall forthwith transmit to the defendant company at its last known principal place of business by registered or certified mail, return receipt requested, one (1) of the copies of such process, with complaint attached, the other copy to be retained in a record which shall show all process served upon and transmitted by him. Such service shall be sufficient provided the returned receipt or, if the defendant company shall refuse to accept such mailing, the registered mail together with an affidavit of plaintiff or his attorney stating that service was made upon the agent and forwarded as above set forth but that such mail was returned by the post office department is filed with the court. The agent shall make information and receipts available to plaintiff, defendant or their attorneys. No plaintiff or complainant shall be entitled to a judgment by default based on service authorized by this section until the expiration of at least thirty (30) days from the date on which either the post office receipt or the unclaimed mail together with affidavit is filed with the court. Nothing in this section shall limit or abridge the

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right to serve any process, notice or demand upon any company in any other manner permitted by law.

~~(17)~~ **(8)** Proof which satisfies the department that it has complied with the financial requirements imposed in this chapter upon foreign and alien insurance companies which transact business in this state and that it is entitled to public confidence and that its admission to transact business in this state will not be prejudicial to public interest.

SECTION 3. IC 27-1-17-4.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2006]: **Sec. 4.2. (a) A foreign or alien insurance company that provides a surety bond that is required or permitted under the law of the United States shall execute a power of attorney in a form prescribed by the department irrevocably appointing the commissioner as the insurance company's agent for service of process in an action on the surety bond if the:**

- (1) surety bond was provided in Indiana; and**
- (2) service of process under this section is in addition to another method of service of process authorized by law or court rule.**

(b) Service of process under this section has the same effect as personal service on the insurance company.

(c) Upon receipt of process described in this section, the commissioner shall forward the process to the resident agent designated by the insurance company under section 4(7) of this chapter.

(d) The commissioner may adopt rules under IC 4-22-2 to establish reasonable fees for the acceptance of process described in this section. Fees collected under rules adopted under this subsection must be deposited in the department of insurance fund established by IC 27-1-3-28."

Renumber all SECTIONS consecutively.

(Reference is to ESB 349 as printed February 17, 2006.)

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 349 be amended to read as follows:

Page 17, after line 21, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE JULY 1, 2006] (a) The definitions in IC 27-1-29.1 apply throughout this SECTION.

(b) This SECTION applies to a member that:

- (1) has been a member of the fund for at least ten (10) years; and**
- (2) provided a withdrawal notice in 2005 for the 2006 calendar year insured period.**

(c) A member described in subsection (b) may:

- (1) withdraw from the fund with proper notice; and**
- (2) elect to receive a rebate of the member's prior assessments from the reserve account established under IC 27-1-29.1-8 to establish a self-insured retainage account.**

(d) The commission shall pay a rebate described in subsection (c) to a member making an election under subsection (c) at any time the reserve account exceeds the five million dollar (\$5,000,000) balance required under IC 27-1-29.1-8(a).

(e) Notwithstanding IC 27-1-29.1-21, after a member described in this SECTION withdraws from the fund and receives a rebate under this SECTION:

- (1) the member is released from all liability to the fund related to claims based on acts or omissions that took place while the member was a member of the fund; and**
- (2) the fund is released from all liability related to claims based on acts or omissions of the member that took place while the member was a member of the fund.**

(f) This SECTION expires December 31, 2008."

(Reference is to ESB 349 as printed February 17, 2006.)

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